IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 23461 of 2007(R)

PETITIONERS:

1. JIBI THOMAS @ GEORGE THOMAS,
   GALILIA, PIPE LINE ROAD, PALARIVATTOM, COCHIN-25.

2. DEEPA GEORGE,
   GALILIA, PIPE LINE ROAD, PALARIVATTOM, COCHIN-25.

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.NAVEEN SHERRY LUKOSE

RESPONDENTS:

1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY, DEPARTMENT OF
   LOCAL SELF GOVERNMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. CORPORATION OF COCHIN,
   REPRESENTED BY ITS SECRETARY, COCHIN.

3. ASSISTANT EXECUTIVE ENGINEER,
   EAST ZONE, COCHIN OFFICE, CORPORATION OF COCHIN.

R1 BY ADV. SRI. K.J. MOHAMMED ANZAR, SR. GOVT. PLEADER.
R2 & R3 BY ADV. SRI.S. RAMESH BABU, SC, COCHIN CORPN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 23461 OF 2007

Dated this the 7th day of September, 2007

JUDGMENT

The Writ Petitioner has, in my opinion, a very genuine grievance. His application for building permit, made as per Ext.P3, is not being favourably considered by the Corporation of Cochin on the ground that the plot on which the building has to be constructed is required for what is mentioned as "Padmasarovaram Project". This is not first time that the petitioner approaches this Court voicing a like grievance. This Court, under Ext.P4 judgment, noticing the judgment of the Division Bench in **Padmini v. State of Kerala** [1999 (3) KLT 465] held that unless the Corporation facilitates the promulgation of a notification under Section 4 of the Land Acquisition Act for the acquisition of the petitioner's property, the Corporation will not be justified in rejecting the petitioner's application on the ground that there is a proposal to acquire the property. In fact the area of the land covered by Ext.P4 judgment was 21.06 acres and the Corporation was able to see that a notification under Section 4(1) of the Land Acquisition Act is promulgated by the Government for acquisition of various properties including that of petitioner. Ext.P5 is the notification, dt.14.12.05, so promulgated. Obviously, the above notification has lapsed since the statutory

declaration under Section 6 has not been passed pursuant to Ext.P4. If at all the Corporation wants to acquire the property in question, they will have to commence the land acquisition proceedings de novo by promulgation of fresh Section 4 notification. Complaining that the Corporation is without any justifiable reason insisting that the petitioner shall not deal with his property as any other absolute owner, the petitioner seeks the following reliefs:

> i. issue a writ in the nature of a declaration, declaring that Ext.P5 notification dated 14.12.05 has lapsed and cannot be a bar against petitioner constructing or dealing with his property situated in Sy. No.533/1, 5 and Sy. 534/1, 2, 5 and 6 of Elamkulam Village.
>
> ii. issue a writ of mandamus or other appropriate writ order or direction directing the 2nd respondent to grant sanction to the petitioner to construct building as applied for, disregarding Ext.P5 notification.

2. Heard Sri.Bechu Kurian Thomas, counsel for the petitioner, Sri.Ramesh Babu, Standing Counsel for the Corporation and Sri.K.J. Mohammed Anzar, Government Pleader. My attention was drawn by Sri.Bechu Kurian to the averments in the Writ Petition and the various documents placed on record. Learned counsel would cite the judgment of the Division Bench in Padmini's case (supra) and also that of the Supreme Court in **Raju Jethmalani & others v. State of Maharashtra & others** [(2005) 11 SCC 222]. The counsel also invited my attention to

Ext.P6 and argued that not even administrative sanction has not been so far received by the Corporation for the Padmasarovaram Project. He relies on Ext.P6(a) also which is to the effect that there is a budgetary provision for a sum of Rs.50 lakhs only towards the Padmasarovaram project. He submits that the total area to be acquired will be 13 acres, of immensily valuable land, in the heart areas of the Corporation of Cochin. The learned Standing Counsel for the Corporation would submit that a genuine proposal to acquire the petitioner's property exists and the petitioner will be taking a risk by constructing building on the property which, at any time, can be acquired by the Corporation for genuine public purpose. Counsel submitted that if the land is acquired by the Corporation, the petitioner will not be entitled for any compensation for the improvements put up by him on the property and that it should be so clarified.

3. Having considered the rival submissions addressed at the Bar in the light of the principles emerging from the judgment of the Division Bench in **Padmini**'s case (supra) and that of the Supreme Court in **Raju Jethmalani**'s case,(supra) I am of the view that, in the circumstances which attend on this case, the Corporation is not justified in rejecting the building permit application of the petitioner and that in the event of prospective acquisition, the petitioner will not be entitled for any

compensation. I follow the above two decisions and allow the Writ Petition.

It is declared that Ext.P5 notification has already lapsed and even if the Corporation is desirous of acquiring the properties in question, they will have to initiate proceedings de novo. In view of the above declaration, there will be a direction to the 2nd respondent to grant sanction of permit to the petitioner for construction of a building as applied for, notwithstanding Ext.P5 notification. It is however made clear that, this judgment will not stand in the way of the Corporation acquiring the land for any genuine public purpose in which case the petitioner will be entitled for compensation under the Land Acquisition Act.

PIUS C. KURIAKOSE, JUDGE

btt